



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 07-1056-JP

**PUBLIC WARNING
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE TONY TORRES
JUSTICE OF THE PEACE, PRECINCT 2, PLACE 2
BROWNSVILLE, CAMERON COUNTY, TEXAS**

During its meeting on February 11 - 13, 2009, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Tony Torres, Justice of the Peace for Precinct 2, Place 2, in Brownsville, Cameron County, Texas. Judge Torres was advised by letter of the Commission's concerns and provided a written response. Judge Torres appeared with counsel before the Commission on February 11, 2009, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Tony Torres was Justice of the Peace for Precinct 2, Place 2, in Brownsville, Cameron County, Texas.
2. On December 4, 2006, Antonio Abundiz III ("Antonio") and his mother, Elvira Abundiz ("Elvira"), filed a small claims suit against Teodoro Sanchez ("Sanchez") for damages to Elvira's car after Antonio and Sanchez collided in an automobile accident.
3. On January 15, 2007, Antonio died in an unrelated automobile collision. Despite her son's death, Elvira continued to pursue the small claims action against Sanchez.

4. On January 25, 2007, Judge Torres set the small claims suit for trial for 2:00 p.m. on February 20, 2007.
5. On February 20, 2007, at 12:59 p.m., Judge Torres received a letter via fax from Sandra Gutierrez, secretary for local attorney Gilberto Hinojosa (“Hinojosa”), asking that the trial be reset because Hinojosa was unable to attend.
6. No motion for continuance was included with the fax, nor had Hinojosa filed an appearance on Sanchez’s behalf.
7. Although Elvira appeared for trial at 2:00 p.m. as scheduled, Judge Torres told her that a continuance had been granted and the trial was reset to April 17, 2007.
8. On April 17, 2007, Elvira again appeared before Judge Torres. After neither Sanchez nor Hinojosa appeared, Judge Torres entered a default judgment against Sanchez in the amount of \$1,240. The default judgment was signed on April 18, 2007.
9. According to Judge Torres’ testimony before the Commission, the deadline to file an appeal or grant a new trial in this case was April 28, 2007, after which time the court lost jurisdiction.
10. On May 11, 2007, more than three weeks after Judge Torres signed the default judgment, Hinojosa filed a Motion to Set Aside Default Judgment. Judge Torres testified that he did sign an Order Setting Hearing at this time, but it was never sent to the parties and did not contain a new trial date.
11. On June 11, 2007, however, without notice or a hearing, Judge Torres’ clerk affixed the judge’s signature to an Order Setting Hearing, which scheduled Elvira’s case for trial on July 27, 2007. According to Judge Torres, the clerk used his signature stamp in this instance without his permission and outside his presence.
12. On July 11, 2007, at Elvira’s request, the matter was reset, again by Judge Torres’ clerk, for July 23, 2007.
13. On July 23, 2007, Judge Torres conducted a trial “as if a new trial had been granted.” Elvira, Sanchez and his attorney, Hinojosa, were present.
14. Judge Torres testified that he did not review the case file carefully and, therefore, was not aware at the time of the trial that he had not granted a new trial or that the Motion to Set Aside Default Judgment had been filed after the court had lost jurisdiction.
15. On July 24, 2007, Judge Torres signed a Take Nothing Judgment in favor of Elvira, who had been prevented from testifying at trial about the car wreck or the damage to her vehicle.
16. In August, 2000, the Commission issued a *Public Admonition* to Judge Torres for violating Article V, § 1-a(6) of the Texas Constitution, and Canons 2B and 5(3) [now 5(2)] of the Texas Code of Judicial Conduct, by using his name, judicial position, likeness and supporting statements in well-publicized political advertisements for re-election of the Cameron County sheriff.

17. In June, 1996, the Commission issued a *Public Admonition* to Judge Torres for violating Canon 3B(8), by dismissing a small claims case with prejudice, without any cause for such a ruling, thereby denying the plaintiff's right to ever have her case heard and decided on the merits.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall comply with the law . . ."
2. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part: "A judge . . . shall maintain professional competence in [the law]."

CONCLUSIONS

The Commission concludes from the facts and evidence presented that Judge Torres failed to follow the law and failed to maintain professional competence in the law, in violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, when he (a) failed to provide notice to Elvira or hold a hearing before ruling on Hinojosa's untimely Motion to Set Aside Default Judgment; (b) failed to expressly grant or deny Hinojosa's Motion to Set Aside Default Judgment, but instead simply set the case for trial "as if a new trial had been granted;" (c) failed to review the case file prior to conducting the July 23, 2007, trial in the case; (d) conducted the July 23, 2007 trial in the case after the court had lost jurisdiction over the matter; (e) entered a second judgment in the case after the default judgment in favor of Elvira became final; and (f) prevented Elvira from testifying about the car wreck of the damage to her vehicle. In reaching this decision, the Commission has also taken into account the fact that Judge Torres has received two prior public sanctions, one of which involved similar mishandling of a small claims case.

In condemnation of the above-recited conduct that violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Tony Torres, Justice of the Peace for Precinct 2, Place 2, in Brownsville, Cameron County, Texas.

Pursuant to the order, Judge Torres must obtain **six (6) hours** of instruction with a mentor in addition to his required judicial education. In particular, the Commission directs that Judge Torres receive instruction in the areas of small claims suits and related provisions in the Texas Government Code and the Texas Rules of Civil Procedure.

Judge Torres shall complete the additional **six (6) hours** of instruction recited above within **sixty (60) days** from the date of written notification of the assignment of a mentor. It is Judge Torres's responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **six (6) hours** of instruction described herein, Judge Torres shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, § 1-a(8) of the Texas Constitution, it is ordered that the conduct described above be made the subject of a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** by the State Commission on Judicial Conduct.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the **9th** day of March, 2009.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct